



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Peter F. Kilmartin, Attorney General

VIA EMAIL ONLY

March 16, 2015
PR 15-13

Ms. C. Smith

Re: Smith v. Warwick Public School Department

Dear Ms. Smith:

Your Access to Public Records Act ("APRA") complaint filed against the Warwick Public School Department ("School Department") is complete. By email correspondence dated July 18, 2014, you alleged that the School Department violated the APRA when it:

- "1. Did not properly deny my request for public records (RIGL 38-2-7(c)).
2. Did not provide me with notice of the appeal process when they denied me access to public records (RIGL 38-2-7(a)).
3. Did not provide the responsive documents in response to my records request. (RIGL 38-2-7)."

Legal counsel for the School Department, Attorney Rosemary Healey, provided an affidavit on August 4, 2014. The School Department responds as follows:

"I would to [sic] take this opportunity to assure you that a complete response to Ms. Smith's Access to Public Records Act request was made. In fact, a further explanation than was required by law was given to her about the non-existence of such documents. No documents (or recordings, tapes or films of a lease agreement or meeting minutes) were withheld from her. Therefore, it was not necessary to recite a reason for withholding anything nor was there any adverse action for her to appeal."

We acknowledge your August 8, 2014 rebuttal.

At the outset, we note that in examining whether a violation of the APRA has occurred, we are mindful that our mandate is not to substitute this Department's independent judgment concerning whether an infraction has occurred, but instead, to interpret and enforce the APRA as the General Assembly has written this law and as the Rhode Island Supreme Court has interpreted its provisions. Furthermore, our statutory mandate is limited to determining whether the School Department violated the APRA. See R.I. Gen. Laws § 38-2-8. In other words, we do not write on a blank slate.

On June 25, 2014, you submitted an APRA request to the Warwick Public School Department seeking the following records:

- “1. Copies of the agreement/lease between the Warwick School Department and West Bay Collaborative for the special education school being held at the defunct Greene School on Draper Ave for every year that West Bay was operating at this location
2. A copy of the motion that records the vote from the school committee that approved the agreement/lease with the West Bay Collaborative
3. Copies of the 2014 – 2015 budget slide presentation as presented by each department during the 2014 – 2015 budget hearing”¹

On June 30, 2014, the School Department responded to your APRA request. In pertinent part, the School Department states:

“I am responding to paragraphs 1 and 2 of your request for access to public records dated June 25, 2014[4].

Paragraph 1: (Your request) Copies of the agreement/lease between teh [sic] Warwick School Deaprtment [sic] and West Bay Collaborative for the special education school being held a tthe defunct [sic] Greene School on Draper Avenue for every yeart [sic] that West Bay was operating at this location.

(Our response) None. Oral agreement only.

Paragraph 2: (Your request) None other than the fact that the school committee approves the budget annually. No approval of this arrangement was required.”

In your complaint, you allege three (3) APRA violations. Specifically, you state that:

¹ It appears that your APRA request for “[c]opies of the 2014 – 2015 budget slide presentation as presented by each department during the 2014 – 2015 budget hearing” was provided to you and that you take no issue with the documents you received. As such, this complaint will focus on items one (1) and two (2) listed above.

“Warwick Public Schools:

1. Did not properly deny my request for public records (RIGL 38-2-7(c)).
2. Did not provide me with notice of the appeal process when they denied me access to public records (RIGL 38-2-7(a)).
3. Did not provide the responsive documents in response to my records request. (RIGL 38-2-7).”

Although not clear, it appears that both allegations one (1) and three (3) pertain to your request for “[c]opies of the agreement/lease between the Warwick School Department and West Bay Collaborative for the special education school being held at the defunct Greene School on Draper Ave for every year that West Bay was operating at this location” and your request for “[a] copy of the motion that records the vote from the school committee that approved the agreement/lease with the West Bay Collaborative (“WBC”).” We first address your assertions that the School Department “[d]id not properly deny [your] request for public records (RIGL 38-2-7(c)),” and that it “[d]id not provide [] responsive documents in response to my records request (RIGL 38-2-7).”

Pursuant to the APRA, a public body has ten (10) business days to respond to a request for documents. See R.I. Gen. Laws § 38-2-7(a). If the public body denies the request, a written response detailing the specific reasons for the denial shall be sent within those ten (10) business days to the person or entity making the request. Id. If no response is sent within ten (10) business days, the lack of response will be deemed a denial. See R.I. Gen. Laws § 38-2-7(b). The APRA further provides that “[a] public body that receives a request to inspect or copy records that do not exist or are not within its custody or control, shall, in responding to the request in accordance with this chapter, state that it does not have or maintain the requested records. See R.I. Gen. Laws § 38-2-7(c).

It appears that you take issue with the fact that the School Department indicated “[n]one. Oral agreement only,” and did not explicitly state that “it does not have or maintain the requested records” as the words appear in R.I. Gen. Laws § 38-2-7(c). Even if we assume that the APRA requires the type of notification you allege, but see Susler v. Department of Public Safety, PR 14-22 and Clark v. Department of Public Safety, PR 14-23, it is clear that the APRA does not require a public body to use any talismanic language to indicate that no documents responsive to a request exist.

Here, the School Department’s June 30, 2014 response – “None. Oral agreement only” – is in accordance with the APRA. Specifically, the School Department responded to your request within ten (10) business days by indicating that it did not maintain documents responsive to your

request and by providing “the specific reason for the denial,” *i.e.*, “oral agreement only” or that no documents exist. *See* R.I. Gen. Laws § 38-2-7. While you contend that “[t]o date [you] have not received any explanation” as to why no document exists, respectfully, the APRA only requires a public body to provide “the specific reason for the denial,” *id.*, and does not require a public body to explain why it does not maintain the requested documents. Although it does not appear that you take issue with the School Department’s response to your second request, the School Department’s response, and our conclusion, are similar. Accordingly, we find that the School Department properly responded to your request in accordance with the APRA.

In addition, you argue that “[a] public record is not limited to paper form (RIGL 38-2-2(4)[)], a sound recording, tapes, films, etc. are all acceptable responsive records,” and that the School Department “did not provide [you] with a copy of the oral agreement.” In its August 4, 2014 response, the School Department affirms that “[n]o documents (or recordings, tapes or films of a lease agreement or meeting minutes) were withheld from [you],” and we have been presented with no evidence to suggest otherwise. Respectfully, while you insist that “[i]n order for there to be an agreement/lease for the [WBC] to be housed and operate out of a public building certain procedures and documentation is necessary,” you have provided no evidence to support this argument and directing us to Rhode Island General Laws Chapter 45 in no way demonstrates that the School Department maintains the records you requested. Therefore, based on the evidence presented, we conclude that the School Department did not violate the APRA when it did not provide you documents that do not exist. *See* R.I. Gen. Laws § 38-2-3(h). *See e.g., Smith v. Rhode Island Department of Education*, PR 15-12.

With respect to your allegation that the School Department “[d]id not provide [] responsive documents in response to my records request,” specifically, that it “did not provide a copy of the motion and the results of the vote of the annual budget,” we also find no violation. While you argue that “a copy of the motion and the results of the vote of the annual budget [] are relevant responsive records,” respectfully, we disagree. In this vein, we note that “it is the requester’s responsibility to frame requests with sufficient particularity to ensure that searches are not unreasonably burdensome, and to enable the searching agency to determine precisely what records are being requested.” *Assassination Archives and Research v. Central Intelligence Agency*, 720 F.Supp. 217 (D.D.C. 1989). *See also Palazzo v. Rhode Island Senate*, PR 11-21. Here, you argue that “Warwick did not provide a copy of the motion and the results of the vote of the annual budget,” however, you did not request “a copy of the motion and the results of the vote of the annual budget.” Indeed, your APRA request was specific in that you sought “[a] copy of the motion that records the vote from the school committee that approved the agreement/lease with the [WBC].” (Emphasis added). Based on your specific request, any document that does not illustrate a “motion” and “vote” regarding the lease/agreement between the School Department and the WBC would not be responsive. Regardless, no evidence has

been presented to advance your argument that the School Department maintained a copy of “the motion that records the vote,” and it is not difficult for us to conclude that such a document does not exist. See R.I. Gen. Laws § 38-2-3(h). Therefore, we find that the School Department did not violate the APRA when it did not provide you with a document that did not exist. See R.I. Gen. Laws § 38-2-3(h).

Lastly, you argue that the School Department “[d]id not provide [you] with notice of the appeal process when they denied [you] access to public records.” In response, the School Department contends that “[n]o documents...were withheld from [you]. Therefore, it was not necessary to recite a reason for withholding anything nor was there any adverse action for [you] to appeal.”

We respectfully reject this argument. Under the APRA, “[a]ny denial of the right to inspect or copy records...shall be made to the person or entity requesting the right in writing giving the specific reasons for the denial within ten (10) business days of the request and indicating the procedures for appealing the denial.” See R.I. Gen. Laws § 38-2-7(a). This Department’s review of the language contained in the School Department’s June 30, 2014 response, as well as the other evidence presented, supports a finding that the School Department responded to your APRA request within ten (10) business days by denying your records request and failed to indicate the process for appealing the denial. While the School Department’s basis for the denial may have been appropriate as discussed herein, by not providing access to requested documents, the request was denied. Therefore, consistent with R.I. Gen. Laws § 38-2-7(a), we conclude that the School Department violated the APRA when it failed to indicate the appeal procedure in its June 30 denial. Notwithstanding our conclusion, we note that even without the School Department indicating the procedures for appealing its denial, you were well aware of the process as evidenced by the filing of the instant complaint and the three (3) other APRA complaints you filed against the Rhode Island Department of Education in 2013 and 2014. See Smith v. RIDE, PR 15 – 12.

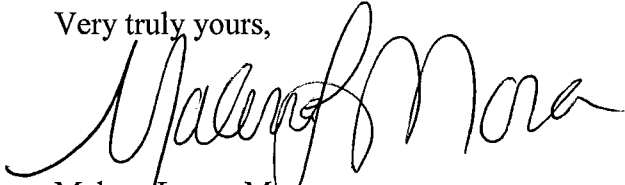
Upon a finding of an APRA violation, the Attorney General may file a complaint in Superior Court on behalf of the Complainant, requesting “injunctive or declaratory relief.” See R.I. Gen. Laws § 38-2-8(b). A court “shall impose a civil fine not exceeding two thousand dollars (\$2,000) against a public body...found to have committed a knowing and willful violation of this chapter, and a civil fine not to exceed one thousand dollars (\$1,000) against a public body found to have recklessly violated this chapter***.” See R.I. Gen. Laws § 38-2-9(d).

Here we find insufficient evidence that the violation discussed herein is willful and knowing, or reckless. Injunctive relief is also not appropriate in this case and as noted, you were aware of the procedure to file an APRA complaint. Although we will not file suit in this matter, nothing within the APRA prohibits an individual from obtaining legal counsel for the purposes of instituting injunctive or declaratory relief within the Superior Court. This finding serves as

notice to the School Department that the conduct discussed herein is unlawful and may serve as evidence of a willful or knowing violation in any similar situation. Please be advised that we are closing our file as of the date of this letter.

We thank you for your interest in keeping government open and accountable to the public.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Malena Lopez Mora', written in a cursive style.

Malena Lopez Mora

Special Assistant Attorney General

Extension 2307

Cc: Rosemary Healey